

Appl. No.10/765,482
Amdt. Dated: January 19, 2005
Reply to Office Action of 10/19/2004

REMARKS

Priority Claim

Applicant requests that the Office acknowledge the claim of priority under 35 USC Section 120. The present application claims the priority to US application no 09/790,242 filed February 20, 2001, now issued Patent No. 6,682,523. The applicant respectfully requests that the Office acknowledge this claim.

Claim Rejections – 35 USC § 103

The Office has quoted the statute from 35 USC 103(a), which is referenced herein. The Office has rejected claims 1-15 as being unpatentable over US Pat. No 5,549,596 issued to Latina in view of US Published Application No. 2004/00393378. Applicant has carefully considered the Office rejections and respectfully submits that the amended claims, as supported by the arguments herein, are distinguishable from the cited reference.

According to the MPEP §2143.01, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art."

A useful presentation for the proper standard for determining obviousness under 35 USC §103(a) can be illustrated as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue;
3. Resolving the level of ordinary skill in the pertinent art; and
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

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The Office alleges that the '596 reference discloses the use of exogenous chromophore particles within the intratrabecular spaces of the meshwork. In contrast to the claimed invention, the exogenous chromophore disclosed by the '596 reference are not localized in the spaces of the meshwork, but instead are disposed within the cells of the meshwork itself. The pigments and dyes of the '596 reference are introduced into the eye, where they are absorbed by phagocytic trabecular meshwork cells. The pigment is thus incorporated into the cell, not the space around the cell. The applicant respectfully draws the Offices attention to the consequences of such an incorporation as they are articulated by the '596 patent in Col. 5, LL 17-20, "Other pigments. . . may be introduced to phagocytic target cells prior to laser irradiation to ablate the pigmented cells." The result of such an incorporation of the chromophore into the cell is, therefore, ablation and cell death. This result is in marked contrast to the claimed invention, since, as articulated in the specification of the claimed invention, cell death and ablation is undesirable. The claimed invention, by way of contrast, claims "localizing a volume of particles carrying a selected chromophore within the spaces of the meshwork. . . ." The applicant respectfully submits that whereas the pigments of the '596 reference are disposed within the cells of the meshwork, they are not localized within the spaces of the meshwork. In contrast to the claimed invention chromophore particles with a gold surface layer are the targets of irradiation, and direct the resulting energy to the meshwork so as to cause microcavitation and cleaning of the meshwork, the '596 reference has pigments embedded in the cells of the meshwork which are then ablated or destroyed.

The applicant likewise respectfully disagrees with the Offices allegation that the '378 reference discloses the use of gold chromophores within ophthalmologic therapy. The applicant first wishes to note that he does not concede the cited reference to be prior to the effective filing date of claimed material. However, the applicant directs the Office's attention to paragraph 21 of the '378 reference where gold chromophores are discussed. The Applicant notes that the discussion related to the attachment of chromophoric material to "tumor cells, or other cells to be killed" and specifically related to "other medical procedures which can benefit from selective photocoagulation, such as the treatment of neural tissue by laser surgery." The chromophore is "absorbed within the cell". Again, the chromophores are not disposed within the space

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surrounding cells, but instead absorbed into a cell and provide a means for introducing or localizing radiation to the cell, thereby ablating or killing the cell.

The applicant respectfully submits both, that one of ordinary skill in the art would not be likely to combine the two references and that if combined, the two references would not disclose the claimed invention. The '596 reference discloses the ablation of pigmented cells in opthamological treatment of glaucoma. The '378 reference discloses the thermal coagulation of cells for the treatment of retinal pigment epithelium. In the '378 disclosure of the improvements over the '596 reference, which the '378 reference dismissed as providing an impractically long observation time required to determine if a therapeutic endpoint was reached, the '378 reference makes sweeping statements relating to the use of other lasers on other tissue using other chromophores. There is no suggestion that the references chromophores would in any way be beneficially incorporated in to the '596 reference. Both references unequivocally refer to the ablation of tissue, not the removal of detritus and other debris located in the space within the trabecular meshwork.

In summary, no suggest is found in the cited references for the modification allegedly within the skill of one of ordinary skill in the field, the cited references fail either alone or in combination to disclose the presence of particles with gold chromophores localized in the spaces between the cells of the trabecular meshwork. At least of those reasons states herein, the applicant respectfully requests that the Office withdraw its rejection of claims 1-15.

The Office makes further rejections of claims 2, 3, 5, 7, 8, and 13. The applicant respectfully disagrees with the rejections, and respectfully submits that at least for those statements recited above, the claimed subject matter is not obvious in light of the cited references.

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Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



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